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Attorneys for Defendant  
GATEWAY TITLE COMPANY

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AUDREY MCNAMARA NEVIS,

Plaintiff,

v.

WELLS FARGO BANK, a California  
corporation, EXECUTIVE FINANCIAL  
LENDING, JOHN B. SPEAR, an individual,  
SHAI MOSHE, an individual, GATEWAY  
TITLE COMPANY, QUALITY LOAN  
SERVICES, Trustee and DOES 1-100, inclusive,

Defendants.

Case No. C 07 2568 MHP

**ANSWER OF GATEWAY TITLE  
COMPANY TO SECOND AMENDED  
COMPLAINT**

Defendant Gateway Title Company ("Gateway") answers the Second Amended Complaint ("SAC") of Plaintiff Audrey McNamara Nevis as follows:

1. Answering paragraph 1 of the SAC, Gateway lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the first sentence of said paragraph and on that basis denies said allegations. Gateway denies the allegations contained in the second sentence. Gateway denies that it engaged in any fraudulent, deceptive and negligent acts and practices.

2. Gateway lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraphs 2 through 7 of the SAC and on that basis denies the

1 allegations.

2 3. Answering paragraph 8 of the SAC, Gateway denies the allegations of the first  
3 sentence as to Gateway. Gateway lacks knowledge or information sufficient to form a belief about the  
4 truth of the allegation in the second sentence, and on that basis denies the allegations.

5 4. Gateway lacks knowledge or information sufficient to form a belief about the truth of  
6 the allegations contained in paragraph 9 of the SAC and on that basis denies the allegations.

7 5. Answering paragraph 10 of the SAC, Gateway denies that it engaged in any  
8 wrongdoing. Gateway admits that it is authorized to and does business in the Northern District of  
9 California.

10 6. Paragraphs 11 and 12 of the SAC contain legal conclusions which do not require a  
11 response. To the extent a response is required, Gateway lacks knowledge or information sufficient to  
12 form a belief about the truth of the allegations contained in paragraphs 11 and 12 of the SAC and on  
13 that basis denies the allegations.

14 7. Gateway lacks knowledge or information sufficient to form a belief about the truth of  
15 the allegations contained in paragraphs 13 through 19 and on that basis denies the allegations.

16 8. Answering paragraph 20 of the SAC, Gateway admits that it acted as the escrow agent  
17 for the transaction that is the subject of this action.

18 9. Gateway lacks knowledge or information sufficient to form a belief about the truth of  
19 the allegations contained in paragraph 21 of the SAC and on that basis denies the allegations.

20 10. Gateway denies the allegations in paragraphs 22 through 24 of the SAC.

21 11. Gateway lacks knowledge or information sufficient to form a belief about the truth of  
22 the allegations contained in paragraph 25 of the SAC and on that basis denies the allegations.

23 12. Gateway denies the allegations in paragraphs 26 through 29 of the SAC.

24 13. Answering paragraph 30, Gateway realleges and incorporates by reference the  
25 responses to paragraphs 1 through 29 of the SAC as if set forth in full.

26 14. Gateway lacks knowledge or information sufficient to form a belief about the truth of  
27 the allegations contained in paragraphs 31 through 37 of the SAC and on that basis denies the  
28 allegations.

1           15.     Answering paragraph 38 of the SAC, Gateway admits that it handled the escrow for  
2 the transaction that is the subject of the SAC. Gateway lacks knowledge or information sufficient to  
3 form a belief about the truth of the remaining allegations contained in paragraph 33 and on that basis  
4 denies the allegations.

5           16.     Answering paragraph 39 and 40 of the SAC, Gateway denies the allegations therein as  
6 to Gateway.

7           17.     Gateway denies the allegations in paragraph 40 of the SAC.

8           18.     Answering paragraph 41 of the SAC, Gateway denies that it made any false promises  
9 or misrepresentations, as alleged, and denies the remaining allegations of paragraph 41.

10          19.     Answering paragraph 42 of the SAC, Gateway denies that made any false promises,  
11 misrepresentations or concealments, as alleged, and denies the remaining allegations of paragraph 42.

12          20.     Answering paragraph 43 of the SAC, Gateway admits that it earned a modest fee for  
13 handling the escrow for the transaction. Gateway denies that it earned significant fees, as alleged.  
14 Gateway lacks knowledge or information sufficient to form a belief about the truth of the allegations  
15 in paragraph 43, and on that basis denies the allegations.

16          21.     Gateway lacks knowledge or information sufficient to form a belief about the truth of  
17 the allegations in paragraphs 44 through 48 of the SAC and on that basis denies the allegations.

18          22.     Gateway denies the allegations in paragraph 49 of the SAC as to Gateway. Gateway  
19 lacks knowledge or information sufficient to form a belief about the truth of the allegations regarding  
20 plaintiff's age and financial status, and on that basis denies the allegations.

21          23.     Answering paragraph 50 of the SAC, Gateway denies that it engaged in conduct and  
22 practices in targeting Plaintiff as alleged in the SAC and referred to in paragraph 50. Gateway lacks  
23 knowledge or information sufficient to form a belief about the truth of the remaining allegations in  
24 paragraph 50 and on that basis denies the remaining allegations.

25          24.     Answering paragraph 51 of the SAC, Gateway realleges and incorporates by reference  
26 the responses to paragraphs 1 through 50 of the SAC as if set forth in full.

27          25.     Answering paragraphs 52 through 58 of the SAC, Gateway acknowledges that the first  
28 cause of action for violations of the TILA and Regulation Z, is not against Gateway. On the basis that

1 the allegations against “Defendants” in paragraphs 52 through 58 are not against Gateway, Gateway  
2 responds that it lacks knowledge or information sufficient to form a belief about the truth of the  
3 allegations contained in paragraphs 52 through 58 and on that basis denies the allegations.

4 26. Answering paragraph 59 of the SAC, Gateway realleges and incorporates by reference  
5 the responses to paragraphs 1 through 58 of the SAC as if set forth in full.

6 27. Answering paragraphs 60 through 63 of the SAC, Gateway asserts that the second  
7 cause of action, for violation of the RESPA, is not against Gateway. On the basis that the allegations  
8 against “Defendants” in paragraphs 60 through 63 are not against Gateway, Gateway responds that it  
9 lacks knowledge or information sufficient to form a belief about the truth of the allegations in  
10 paragraphs 60 through 63 of the SAC and on that basis denies the allegations.

11 28. Answering paragraph 64 of the SAC, Gateway realleges and incorporates by reference  
12 the responses to paragraphs 1 through 63 of the SAC as if set forth in full.

13 29. Responding to paragraphs 65 through 70 of the SAC, Gateway asserts that the third  
14 cause of action, for fraud and deceit, is not against Gateway. On the basis that the allegations against  
15 “Defendants” in paragraphs 65 through 70 are not against Gateway, Gateway responds that it lacks  
16 knowledge or information sufficient to form a belief about the truth of the allegations in paragraphs  
17 65 through 70 of the SAC and on that basis denies the allegations.

18 30. Answering paragraph 71 of the SAC, Gateway realleges and incorporates by reference  
19 the responses to paragraphs 1 through 70 of the SAC as if set forth in full.

20 31. Responding to paragraphs 71 through 79 of the SAC, Gateway asserts that the fourth  
21 cause of action for elder abuse is not against Gateway. On the basis that the allegations against  
22 “Defendants” in paragraphs 71 through 79 are not against Gateway, Gateway responds that it lacks  
23 knowledge or information sufficient to form a belief about the truth of the allegations contained in  
24 paragraphs 71 through 79 of the SAC and on that basis denies the allegations.

25 32. Answering paragraph 80 of the SAC, Gateway realleges and incorporates by reference  
26 the responses to paragraphs 1 through 79 of the SAC as if set forth in full.

27 33. Answering paragraph 81 of the SAC, Gateway admits that it acted as the escrow agent  
28 for the transaction that is the subject of the litigation and owed a duty to Plaintiff to follow the escrow

1 instructions given to it. Gateway denies the remaining allegations contained in paragraph 81.

2 34. Answering paragraph 82 of the SAC, Gateway denies that it was a fiduciary in the  
3 traditional sense and asserts that it had a limited duty to Plaintiff to follow the escrow instructions.  
4 Gateway lacks knowledge or information sufficient to form a belief about the truth of the remaining  
5 allegations in paragraph 82 of the SAC, and on that basis denies the allegations.

6 35. Answering paragraph 83 of the SAC, Gateway denies that it was a fiduciary in the  
7 traditional sense and asserts that it had a limited duty to Plaintiff to follow the escrow instructions.  
8 Gateway denies the remaining allegations in paragraph 83 of the SAC.

9 36. Answering paragraph 84 of the SAC, Gateway denies that it was a fiduciary in the  
10 traditional sense and asserts that it had a limited duty to Plaintiff to follow the escrow instructions  
11 given to it by the parties. As to the remaining allegations in paragraph 84 of the SAC, Gateway lacks  
12 knowledge or information sufficient to form a belief about the truth of the remaining allegations and  
13 on that basis denies the allegations.

14 37. Gateway denies the allegations in paragraphs 85 and 86 of the SAC.

15 38. Answering paragraph 87 of the SAC, Gateway denies that it was a fiduciary in the  
16 traditional sense and asserts that it had a limited duty to Plaintiff to follow the escrow instructions.  
17 Gateway denies that it breached any fiduciary duty to Plaintiff. As to the remaining allegations in  
18 paragraph 87, Gateway lacks knowledge or information sufficient to form a belief about the truth of  
19 the remaining allegations and on that basis denies the allegations.

20 39. Gateway denies the allegations in paragraphs 88 through 90 of the SAC.

21 40. Answering paragraph 91 of the SAC, Gateway realleges and incorporates by reference  
22 the responses to paragraphs 1 through 90 of the SAC as if set forth in full.

23 41. Gateway denies the allegations in paragraph 92 of the SAC.

24 42. Answering paragraph 93 of the SAC, Gateway admits that it acted as the lender's and  
25 Plaintiff's escrow agent and had a limited duty to follow the escrow instructions given to it by the  
26 parties. Gateway lacks knowledge or information sufficient to form a belief about the truth of the  
27 remaining allegations contained in paragraph 93 and on that basis denies said allegations.

28 43. Answering paragraphs 94 of the SAC, Gateway lacks knowledge or information

1 sufficient to form a belief about the truth of the allegations contained in said paragraph and on that  
2 basis denies said allegations.

3 44. Gateway denies the allegations in paragraphs 95 and 96 of the SAC.

4 45. Answering paragraph 97 of the SAC, Gateway realleges and incorporates by reference  
5 the responses to paragraphs 1 through 96 of the SAC as if set forth in full.

6 46. Gateway denies the allegations in paragraph 98 through 100 of the SAC.

7 47. Answering paragraph 101 of the SAC, Gateway denies that it made the  
8 misrepresentations and engaged in the concealment, deceit, undue influence, coercion and other  
9 wrongful conduct as alleged. As to the remaining allegations of paragraph 101, Gateway lacks  
10 knowledge or information sufficient to form a belief about the truth of the remaining allegations and  
11 on that basis denies the allegations.

12 48. Gateway denies the allegations in paragraph 102 of the SAC.

13 49. Answering paragraph 103 of the SAC, Gateway denies that it made the  
14 misrepresentations and engaged in the concealment, deceit, undue influence, coercion and other  
15 wrongful conduct as alleged. As to the remaining allegations of paragraph 103, Gateway lacks  
16 knowledge or information sufficient to form a belief about the truth of the remaining allegations and  
17 on that basis denies the allegations.

18 50. Answering paragraph 104 of the SAC, Gateway denies that it was unjustly enriched as  
19 alleged. As to the remaining allegations of paragraph 104, Gateway lacks knowledge or information  
20 sufficient to form a belief about the truth of the remaining allegations and on that basis denies the  
21 allegations.

22 51. Gateway denies the allegations in paragraph 105 of the SAC.

23 52. Answering paragraph 106 of the SAC, Gateway realleges and incorporates by  
24 reference the responses to paragraphs 1 through 105 of the SAC as if set forth in full.

25 53. Answering paragraphs 107 through 114 of the SAC, Gateway denies the allegations  
26 contained therein.

27 54. Answering paragraph 115 of the SAC, Gateway realleges and incorporates by  
28 reference the responses to paragraphs 1 through 114 of the SAC as if set forth in full.

1           55.     Gateway denies the allegations in paragraph 116 of the SAC.

2           56.     Answering paragraph 117 and 118, Gateway admits that it had a limited duty to  
3 Plaintiff to follow the escrow instructions given to it by the parties. As to the remaining allegations of  
4 paragraphs 117 and 118, Gateway lacks knowledge or information sufficient to form a belief about  
5 the truth of the allegations contained in said paragraph and on that basis denies said allegations.

6           57.     Gateway denies the allegations in paragraph 119 through 121 of the SAC.

7                                   **AFFIRMATIVE DEFENSES**

8           58.     As a first affirmative defense, Gateway alleges that each cause of action in the  
9 complaint fails to state a claim against Gateway upon which relief can be granted.

10          59.     As a second affirmative defense, Gateway alleges that as a matter of law, Plaintiff has  
11 misstated the role of an escrow holder and the duties owed to Plaintiff by Gateway in the limited  
12 agency role of an escrow holder.

13          60.     As a third affirmative defense, Gateway alleges Plaintiff's damages, if any, were the  
14 result of the acts of Plaintiff, other defendants or third parties. Any recovery by Plaintiff should be  
15 reduced or eliminated accordingly. If Gateway is found to be liable, it requests an apportionment of  
16 fault among all the parties and requests a judgment of partial indemnification of liability against all  
17 other defendants who may have caused or contributed to Plaintiff's damages, if any.

18          61.     As a fourth affirmative defense, Gateway alleges that to rescind the transaction,  
19 Plaintiff must restore and return the monies received, to the extent that monies were paid to Plaintiff,  
20 or on Plaintiff's behalf.

21          62.     As a fifth affirmative defense, Gateway alleges that Gateway performed all the  
22 obligations under the escrow agreement except for those obligations it was excused or prevented from  
23 performing.

24          63.     As a sixth affirmative defense, Gateway is informed and believes and thereon alleges  
25 that Plaintiff failed to mitigate her damages, if any.

26          64.     As a seventh affirmative defense, Gateway alleges allege that the lender is entitled to  
27 an equitable lien on the property to the extent that it caused to be paid off existing liens and  
28 encumbrances against Plaintiff's real property.

1           65.     As a eighth affirmative defense, Gateway is informed and believes and thereon alleges  
2 that Plaintiff's damages, if any, are barred by the doctrines of waiver and estoppel.

3           WHEREFORE, Gateway prays as follows:

4                                 **PRAYER**

5           1.     That Plaintiff take nothing by reason of the SAC and that Gateway be dismissed from  
6 the action;

7           2.     For costs of suit incurred, including attorney's fees; and

8           3.     For such other and further relief as the Court may deem just and proper.

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10          Dated: July 14, 2008

BARDELLINI, STRAW, CAVIN & BUPP, LLP

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12                                 By:      /s/ Helen V. Powers       
13                                 John F. Cavin  
14                                 Helen V. Powers  
15                                 Attorneys for Defendant  
16                                 GATEWAY TITLE COMPANY  
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